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It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs. When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determination of the matter is for the jury. It is only where the facts are such that all reasonable men must draw the same conclusion from them that the question of negligence is ever considered as one of law for the court.' *Railroad Co. v. Pollard*, 22 Wall. 341, 22 L. Ed. 877; *Delaware, etc., Railroad v. Converse*, 139 U. S. 469, 11 Sup. Ct. 569, 35 L. Ed. 213; *Thompson v. Flint, etc., Railway*, 57 Mich. 300, 23 N. W. 820; *Lake Shore, etc., Railway v. Miller*, 25 Mich. 274; *Grann Trunk Ry. Co. v. Ives*, *supra*, 144 U. S. 417, 12 Sup. Ct. 679, 36 L. Ed. 485."

Criminal Law—Handcuffing Accused.—In *Blair v. Commonwealth* (Ky.), 188 S. W. 390, 393, the Court of Appeals of Kentucky held that on the trial of a criminal charge before a jury the accused is entitled to be free from all shackles, handcuffs, etc., unless there is evident danger of escape, and to freedom from any physical bonds which might tend to confuse or embarrass his mental faculties, or to create a prejudice against him.

The court said in part: "The manacling of a person when upon trial for a criminal offense, whether in bringing him into court, while in the presence of the court or jury or at any stage of the trial, under such circumstances as appear to have attended the handcuffing of appellant, cannot be too strongly condemned. The record furnishes no justification for the great indignity to which he was thus subjected. Indeed, it could have been excused only on the grounds that it was necessary to prevent his escape, prevent injury to his own person, or probable danger to the court, its officers, or to bystanders from his violence, or to prevent some such misconduct on his part as would have obstructed the work or business of the court, none of which grounds is manifested by the record here. We are not advised that this question has been passed on in this jurisdiction, but in many others it has. The law, as we understand it, is well stated in 12 Cyc. 529, as follows: 'At common law defendant, although indicted for the highest crime, must be free from all manner of shackles or bonds, whether on his hands or feet, when he is arraigned, unless there is evident danger of escape. In the United States the common-law rule is followed, and shackling defendant during arraignment, during the calling and examination of the jurors, or at any time during the trial, except in extreme cases to prevent escape or to protect the bystanders from the danger of defendant's

attack, is reversible error.' In 8 R. C. L. 68, a more elaborate statement of the law will be found under the title, Right to Be Free from Shackles: 'At early common law when a prisoner was brought into the court for trial, upon his plea of not guilty to an indictment for a criminal offense, he was entitled to make his appearance free from all shackles or bonds. This is his right today in the United States. The spirit of the law is that a prisoner, upon his trial before a jury, shall have the unrestrained use of his limbs, and shall not suffer any physical bonds or burdens which might tend to confuse or embarrass his mental faculties. Furthermore, a prejudice might be created in the minds of the jury against a prisoner who should be brought before them handcuffed and shackled, which might interfere with a fair and just decision of the question of the guilt or innocence of such prisoner. It is recognized that it lies within the discretion of the trial court to have the prisoner shackled when it is manifest that such a precaution is necessary to prevent violence or escape, and an appellate court will not revise the trial court's action except in a clear case of abuse of discretion. In exercising its discretion the court must have some reason, based on the conduct of the prisoner at the time of trial, to authorize so important a right to be forfeited. There must be some immediate necessity for the use of shackles. A defendant has the right to have his witnesses unmanacled for the same reasons that he is allowed to be so. The right extends alike to the arraignment, the selection of the jury, and all other periods of the trial; but the defendant may be handcuffed while he is being taken to and from the courthouse and the jail, especially where it appears that he is a desperate and dangerous criminal, without violating any of his constitutional rights. And the mere fact that a prisoner, brought before an examining magistrate, remains handcuffed during the proceedings, and in that condition waives a preliminary examination, will not support a plea in abatement. There is no impropriety in having an armed guard keep watch over a defendant on trial for murder in the first degree where the evidence shows that he is a dangerous and desperate character. The failure, through an oversight, to remove shackles from a prisoner for a short time after proceedings have commenced, or any technical violation of the rule prohibiting shackling, not prejudicial to him, is not ground for a new trial; but where there is a substantial violation of the right, a new trial will be granted.' *People v. Harrington*, 42 Cal. 165, 10 Am. Rep. 296; *Matthews v. State*, 9 Lea (Tenn.) 128, 42 Am. Rep. 667; *State v. Williams*, 18 Wash. 47, 50 Pac. 580, 39 L. R. A. 821, 63 Am. St. Rep. 869; *State v. Chase*, 17 N. D. 429, 117 N. W. 537, 17 Ann. Cas. 520; *State v. Temple*, 194 Mo. 237, 92 S. W. 869, 5 Ann. Cas. 954."